Taina Cooke

SEEING PAST THE LIBERAL LEGAL SUBJECT: CULTURAL DEFENCE, AGENCY AND WOMEN

ABSTRACT

The idea of liberal subjectivity prevalent in Western legal traditions assumes a highly autonomous and context-free agent. This assumption of categorical individual agency, I argue, is also a central tenet underlying the debates on female vulnerability/autonomy relating to multiculturalism, feminism and more precisely, to the *cultural defence*. The notion of agency appears dichotomous when it is discussed in relation to women and culture: the two roles available for women in these discussions are those of either victims or agents. By introducing a case from a Finnish District Court, I challenge this simplified view of female vulnerability/autonomy and look for a more nuanced way of understanding a legal subject's agency.

Keywords: agency, cultural defence, cultural minorities, feminism, legal subjectivity, multiculturalism

INTRODUCTION[1]

During my ethnographic fieldwork on the use of cultural arguments in criminal cases in one of Finland's District Courts, I have become familiar with the daily legal performances exercised in its premises. The uncomfortable chairs of a courtroom's back row offer a box seat to legal dramas in which the main characters, the litigants, often seem to have a surprisingly small part. The plaintiffs and defendants remain quiet while those who are called their *assistants* navigate the juridical maze and talk with the loudest of voices. At times legal jargon obscures the sequence of events so substantially that those who are most affected by the case are also the least aware of its developments. This, it seems to me, is possible and poses no marked challenges to the justice system due to the strong underlying assumptions regarding the nature of a liberal legal subject. By default, the subject is assumed so autonomous and rational in essence that even if the surface tells a different story, this fundamental assumption with which the legal professionals work is not easily affected. The liberal legal subject is a highly accountable, independent, and socially de-contextualised agent that also seems to stay clear of any major influences relating to attributes such as culture and gender.

The strong assumptions of a legal subject's autonomy lead to directing scarce attention to the potential vulnerabilities of the litigants. In this paper, my interest is in exploring

a legal subject's vulnerabilities and autonomy, particularly in connection with their gender and cultural background. More specifically, I want to contribute to the discussions around the *cultural defence*, in which the potential impact of a litigant's cultural background on acting unlawfully is considered. I will also refer to the wider debates in multiculturalism and feminism regarding women's agency, arguing that the discussions have tended to reinforce dichotomous views of female vulnerability and autonomy. Consequently, when the vulnerability/autonomy dichotomy is at play in discussions concerning 'Third World' or cultural minority women, these women end up being portrayed as either victims or, at times, as independent agents.

By introducing a case study from a Finnish District Court, I question the relevance of the vulnerability/autonomy division in the context of women and the cultural defence, and look for a more nuanced way of understanding a legal subject's agency that is not blind to situational and cultural influences. In order to further highlight the problematic and deep-rooted assumptions relating to liberal legal subjectivity in Finnish courts, I refer to two additional examples from my research material. I am borrowing the term *liberal legal subject* from Anna Grear (2011: 44) who describes the 'paradigmatic liberal legal subject' as

> a socially de-contextualised, hyper-rational, wilful individual systematically stripped of embodied particularities in order to appear neutral, and, of course, theoretically gender-less, serving the mediation of power linked to property and capital accumulation.

In promoting a more complex notion of the legal agent, Martha Fineman's (2008; 2013) thoughts on the *vulnerable subject* offer a valuable point of reference. According to Fineman, vulnerability rather than autonomy is a universal characteristic of the human condition, which means that the structures of our society, such as social policy and law, should be built to be more responsive towards the 'existing material, cultural, and social imbalances' (Fineman 2008: 4). Fineman argues for a more responsive state and reasons that 'the "vulnerable subject" must replace the autonomous and independent subject asserted in the liberal traditions' (Fineman 2008: 2). Even when Fineman has not built her theories on the vulnerable subject particularly for the criminal justice system to adopt, the concept offers a fresh scholarly perspective that, I believe, is also valuable from the perspective of criminal law (see also Andersson 2016). In the analysis of my own material, applying the concept of the vulnerable subject helps in pointing out the potential shortcomings related to the normativity of liberal legal subjectivity in legal practice.

This article proceeds in three main parts. First, I provide a brief introduction to the debate on the cultural defence. In the second part, I examine the notions of vulnerability and agency in relation to women and culture. I argue that in the cultural defence literature the dichotomous view of female vulnerability/autonomy is favoured over a more nuanced understanding of the culture- and situation-bound aspects of agency. In the third part, I underline the issue through introducing a case study wherein simple notions of female vulnerability and autonomy prove to be insufficient in making sense of a complicated criminal case. Overall, I argue that the idea of liberal legal subjectivity serves as an unquestioned, yet problematic, starting point in legal practice. I seek to support the notion by including material from further research data I have collected. Applying the cultural defence can lead to assessing a litigant's

personal blameworthiness in great detail, yet the theoretical premises from which the cultural defence is drawn, should be carefully scrutinised. This involves challenging the simplifying notion of 'on-or-off' female agency that hinges on the Western idea of an independent, liberal, and acultural legal subject.

The field that has given context to these deliberations, in my case, is the District Court of one of Finland's largest cities. There, I have taken part in 35 criminal litigations that have included members of cultural minorities. In the trials, my focus has been on discussions related to 'culture', and on assessing the potential role played by the litigant's cultural minority background overall. The lengths of these trials have varied from approximately two hours to fifteen days. In addition to this, I have collected 230 court verdicts from various Finnish courts concerning criminal cases dealing with cultural minority members. I have also conducted five in-depth interviews (two prosecutors, a judge, an interpreter, and a lawyer) to complement the research material. In this article, my main focus is on a case from 2014 that was in trial for two days and revolved around a young woman from Afghanistan, referred to here as Miss Sayed (Prosecutor and Finnish Immigration Service v [two defendants] [2014] R14/xxx). I have chosen to focus on Miss Sayed here as, for me, her case illustrates most evidently the issues relating to assigning agency in legal settings where the idea of liberal legal subjectivity defines the site.

BACKGROUND: CULTURAL DEFENCE

The prospect of putting forth cultural arguments in criminal cases has received heightened international attention in recent decades. Due to the large influx of immigrants in many countries, criminal justice systems are encountering defendants from an increased variety of backgrounds. At times legal agents are faced with claims relating to the litigant's cultural minority background, and they have to decide whether to take that into consideration when judging the minority representatives' actions and determining their accountability. The proponents of the cultural defence argue that in some instances, taking a person's cultural background into account is necessary in order to reach a more accurate and fair verdict of the suspected crime and the motives behind it (Anonymous 1986; Renteln 2004; 2009; 2014; Lernestedt 2007; 2014; Parekh 2014). Criminal intent might prove to be lacking when taking into account the cultural context in which the act was performed. One such example, often quoted in the cultural defence literature, is of an Afghanistan man who was prosecuted in the U.S. for gross sexual assault after he admitted kissing the penis of his infant son. The conviction was vacated in the end based on its lacking sexual intent as it was successfully argued that the practice was acceptable in the Afghan community and performed to show love for the child. (State v. Kargar 1996, see Renteln 2004: 59–60; Held and Fontaine 2009: 249–250.) It can be reasoned that there is a fundamental majoritarian culture bias embedded in a legal system that requires recognition of minority views in order to equal out the underlying injustice (Amirthalingam 2009; Parekh 2014: 104). The cultural defence could work as a balancing tool for members of cultural minorities in helping them to receive equal protection of the law—law that is paradoxically pretending to exist outside of cultural difference while being a cultural artefact in itself (Demian 2008: 440; Gershon 2011b: 158).

The possibility of the cultural defence has raised a range of concerns including, for example, the risk of anarchy (Sheybani 1987: 782–783), the ambiguity of the term culture (Good 2008; Demian 2008), the prospect of enforcing stereotypes (Volpp 1994: 90–91; Phillips 2007: 81), as well as the vulnerable position of women and children (Coleman 1996; 2001; Koptiuch 1996; Okin 1999; Mendelsohn 2004; Song 2005; 2007; Phillips 2007; Frick 2014). The scholars concerned with increased discrepancy and a diminished deterrence effect of the law reason that in order to move towards a good future society, the aim of legal uniformity must weigh more than the desire for practices of individualised justice, such as the cultural defence (Sheybani 1987: 782–783; Matravers 2014). A decades-long anthropological headache resulting from defining and interpreting culture, cultural memberships, and 'authentic cultural traditions' is, then, hardly alleviated by the cultural defence discussion. Indeed, it has been argued that in order to succeed, the cultural defence requires culture to be presented in a way that promotes stereotypes and 'essentialises' culture (Volpp 1994; Phillips 2007).

Debate over the cultural defence has stirred up unease among several feminists. The relationship between multiculturalism and feminism has traditionally been understood as particularly problematic (e.g. Cohen et al. 1999; Taramundi 2014) and the debate on the cultural defence is tied closely together with the protracted discussion. Numerous scholars have raised the concern that allowing cultural evidence would mainly benefit men leaving women (and children) without adequate protection from the state (e.g. Phillips 2007; Coleman 1996). As some cultural minorities (predominantly those labelled as 'non-Western') are said to foster patriarchal practices, the fear is that by accepting the cultural defence these customs would end up being legitimised—an act that could be seen as an apparent retrograde step in terms of gender equality endeavours. In these most undesired scenarios, men would get away with practices such as female genital mutilation[2] and child marriages by arguing that they are merely 'part of their culture'. Applying the cultural defence in such cases, however, receives limited support when reviewing literature and the known cultural defence court cases. According to Leti Volpp (1994: 95–101) and Maneesha Deckha (2009: 279), for example, considering cultural factors in a legal case could only come into question when the value of anti-subordination is used as a criterion. Consequently, the cultural defence could only be applied when the vulnerable groups inside the cultural minority are not placed into unequal positions as a result.

VULNERABILITY, AGENCY, WOMEN AND CULTURE

VICTIMS OR AGENTS: WOMEN IN THE CULTURAL DEFENCE DEBATES

The relationship between the cultural defence and feminist aspirations has been discussed for over two decades. What is seen as conflicting here are the two paradigms that both value equality but approach it from different viewpoints, namely, multiculturalism and feminism. Ayelet Shachar (1999; 2001) talks about the 'paradox of multicultural vulnerability' in which the conflict between accommodating different cultures and protecting individual member's rights inside them is a troubling, inevitable fact. Dorianne Coleman (1996: 1098), in turn, has called this the 'Liberal's Dilemma'

and reasons that embracing both simultaneously is not possible, which should lead into 'choosing rights over culture', hence banning the idea of the cultural defence altogether.

The issue that seems to concern Coleman, among several other scholars, is that by permitting cultural evidence the legislation of a state unavoidably works in favour of patriarchal values. The cultural defence, it is feared, becomes a valid excuse for men from cultural minorities to keep exercising violence against women—sadly, many of which might have been seeking to escape these violent traditions through immigration in the first place (Gallin 1994: 736). The cultural defence, then, would send the minority communities the dubious message that the employment of gendered violence is their twisted special right. To avoid this or, moreover, to turn the message upside down, it has been suggested that crimes against women that are based on cultural ideologies warrant, in fact, *harsher* sentencing (Hallevy 2010, 2015).

There seems to be a tendency in the cultural defence literature, then, to victimise women and portray them as the inevitable sufferers in the scenario in which culture is incorporated into the law. According to Coleman (1996: 1160), recognition of the cultural defence would mean that 'The victims simply are left dead, beaten, raped, and mutilated', and potential future (female) victims would lose hope of receiving protection from the state in any crimes argued through culture. Marie-Luisa Frick (2014: 571) shares Coleman's standpoint and argues that 'many women from immigrant backgrounds are passive simply because the gender roles prevailing within their communities force them to be', and later continues:

> To allow cultural rights to triumph over individual human rights would result in the collective's tyranny over the individual and therefore cancel nearly all original human rights that have been drafted precisely with the intention of protecting the individual from his or her society's coercion and suppression. (Frick 2014: 572)

Susan Okin (1999) expresses her critical views of the cultural defence in the influential article titled: 'Is multiculturalism bad for women?' In the article, Okin (1999: 20) writes:

> When a woman from a more patriarchal culture comes to the United States (or some other Western, basically liberal, state), why should she be less protected from male violence than other women are?

Problematically, however, Okin not only appears to assume here that 1) Western liberal states are patriarchal always to a significantly lesser extent than all the non-Western states, and also that 2) non-Western women *need* saving. Coleman, Frick, and Okin, then, strongly emphasise the vulnerability of women in the context of the cultural defence, resulting in a rhetorically effective yet alarmingly skewed portrayal. Such a representation leaves little room for considerations regarding the various subtle ways in which (female) agency can manifest itself.

Another perspective regarding the cultural defence and female agency is presented by Kathryn Duque Lenhart. Lenhart (2013) has analysed the relation between multiculturalism and feminism in the debate over Hispanic women's drug crimes. She has studied cases where minority women use culture as their defence, generally by stating that a closely related male figure forced them to commit the crime. Lenhart (2013: 1641) reasons that the cultural defence lays emphasis on female weakness and hence resorting to the defence in drug crimes

> results in encouraging women to argue that they are submissive to men, going so far as to argue that they have no choice but to always be submissive to men. If they admit that they have a choice, then they cannot blame their crime to their submissiveness.

Lenhart (2013: 1639–1640) sees it possible that in the cases she studied, the women involved did recognise the suppression present in 'their culture' and also their own capacity for self-determination, 'but in order to put forth a cultural defence, they would have to ignore it and pretend they had no autonomy'. Lenhart's arguments indicate a somewhat problematic understanding of a sort of pure autonomous female agency that is effortlessly manipulated by the female subject herself. Regarding agency as something women can either admit to having or pretend to be lacking portrays an account that seems dubiously uncomplicated.

THE MANY SHADES OF AGENCY

The vulnerability/autonomy dichotomy present in the cultural defence debates can be seen as part of much broader considerations around multiculturalism and feminism. Leti Volpp (2001: 1211) has highlighted how Third World and immigrant women are commonly understood as oppressed by their (patriarchal) cultures while Western women are perceived as having choice and autonomy. Both sides of the argument, female oppression and autonomy, have recently surfaced in the debates over *hijabs* and *burkini* swimsuits in France (e.g. Al Jazeera 2016; Naraghi Anderlini 2016; Rubin 2016; Shabi 2016). The general public and the media have been divided in their views concerning the self-determinative capabilities of Muslim women: is it possible for a Muslim woman to freely choose to wear clothing that, according to some, is nothing but an expression of patriarchal oppression? Is the state allowed, or perhaps even entitled to intervene, and prohibit the use of such questionable garments in order to protect its secular identity—and perhaps to protect the oppressed women from 'their cultures'?

Several scholars have challenged the victimhood discourse and highlighted that women are capable of expressing agency even inside nonliberal traditions (e.g. Mohanty 1986; Mahmood 2001, 2005; Sage 2013). The studies focusing on women's involvement in terrorists' organisations, for example, have proven that the victimhood discourse alone is not enough to explain women's connections to these extremist movements (Sage 2013; Agara 2015). Jackson and Gozdecka (2011) have called for an approach that shifts the focus from viewing women who wear Islamic dress as the religious 'other' to a perspective that recognises their personhood. Similarly, Saba Mahmood (2001, 2005) and Julie Billaud (2015) have highlighted that women who are involved in patriarchal religious traditions such as Islam, have particular means to negotiate and exercise their agency even under difficult conditions. Billaud (2015: 152) has carried out ethnographic research among women in Afghanistan and argued that by veiling themselves, the women can also

> make themselves visible, asserting through their covered bodies a set of values that contradict Western notions of modernity according to which withdrawal from religion is the prerequisite to women's emancipation.

Indeed, the manifestation of women's agency should not only count when they 'break free' and abandon the traditions that, according to some, subordinate them.[3] Admittedly, this does pose an uncomfortable challenge to several feminists:

what if, when given a chance to speak, the foreign women do not want to say anything (cf. Song 2007: 83–84)?

Agency is among the terms that escape simple definitions. A number of anthropologists have explored the multifaceted concept, highlighting its connections to ideas such as flexibility, accountability, knowledge. and power (Kockelman 2007), language (Ahearn 2001), epistemological differences (Gershon 2011a), and social, political, and cultural dynamics (Desjarlais 1997: 204). Indeed, it is inadequate to understand agency merely as a synonym for free will, resistance, or a voice (Comaroff and Comaroff 1997: 48) as this ignores both the cultural framework and the temporal nature of the concept. Agency, therefore, does not manifest itself in isolation from the particular context but is rather always culturally and socially negotiated, taking its shape necessarily in a specific time and place (Ortner 1997). Laura Ahearn's (2001: 112) suggestion on understanding agency as 'the socioculturally mediated capacity to act' seems to me like a useful working definition to start with.

The notion of agency has, arguably, become more and more intertwined with ideas related to economic liberalism, free markets, and financial rationality. Ilana Gershon has highlighted the problems deriving from a neoliberal interpretation of agency, which views all social actors in terms of corporate individualism, as 'a flexible bundle of skills that reflexively manages oneself as though the self was a business' (Gershon 2011a: 546). The Western idea of a liberal legal subject merges closely to Gershon's reading on neoliberalism and neoliberal agency. She argues that 'a neoliberal agency creates relationships that are morally lacking and overlooks differences in scale' (Gershon 2011a: 537) and that 'an anthropological imagination', specifically, has what it takes to challenge this problematic conception of agency.

According to Gershon, neoliberal understanding of agency is unjustifiable as it assumes a context that is morally and socially uniform, ignoring the local particularities. Indeed, the best way to speak back to the neoliberalist interpretation of agency is to employ the anthropological imagination, which means paying close attention to epistemological differences and social organisations (Gershon 2011a: 546). Agency is embedded in culture, but people are complex and contradicting actors, they are constantly in motion and in-between, they engage with and are influenced by different social organisations differently.

Strong notions on agency in connection to cultural arguments have led some scholars into contemplating the potential strategical aims underlining the subject's actions. In addition to Lenhart's above mentioned study on Hispanic women and drug crimes, Michelle McKinley (1997, 2009) and Jennifer Coffman (2007) have considered the possible effects of an instrumentalist employment of culture. McKinley and Coffman have raised concerns over the ways in which culture is framed and essentialised in gender-based asylum cases in the U.S. where political asylum can be granted to women who flee domestic violence, forced circumcision, homophobia, sexual assaults, or other types of gender-based maltreatment in their countries of origin (McKinley 2009: 113). It appears that on occasion even fabricated claims have managed to pass. A Ghanaian woman who appeared under the pseudonym Adelaide Abankwah, for example, claimed that if she returned to Ghana where she was expected to assume the office of queen mother of the tribe, her own mother having recently died, she would be subjected to a ritual genital

cutting as punishment for not being a virgin. Later, however, her central claims including her name, the death of her mother, her tribal affiliation and its cultural practices were all discredited (Martin 2005; Coffman 2007: 71).

The term *strategic essentialism* can be employed when simplified notions of one's culture or gender are used for political, legal, or even financial gains. Gayatri Spivak (1988) coined the term, but later distanced herself from it due to what she perceives as misuse of the notion. The concept is indeed problematic, specifically due to its connection to disturbing power relations. To define what is a strategic—or non-strategic—deployment of essentialism problematically suggests that those making the claims 'know better' than those performing the acts (cf. Sahlins 1999). The use of the difficult term in the context of the cultural defence and women seems to be connected to a distinctly uncomplicated understanding of agency. The women who are suspected of strategically building their cultural arguments are quickly positioned from one extreme to another as their status undergoes a complete change from a 'real victim' to a 'manipulative agent' with little consideration given to the shades of grey in between.

DISCUSSING FEMALE VULNERABILITY IN COURT

THE SAYEDS' CASE

My underlying objective in conducting ethnographic research in court has been to study, as an anthropologist, how members from cultural minorities appear in legal arenas and how cultures of many sorts—legal cultures, minority cultures, majority cultures—manifest themselves in criminal court cases. One of the very first cases in which I participated, referred to here as that of Mr. and Mrs. (later Miss) Sayed, demonstrated the complex relationship between law, culture, gender and agency. The Sayeds' case came to highlight aptly, how extremely difficult questions of female vulnerability/autonomy and culture are in a legal context where the notion of a highly independent and de-contextualised agent is the default one.

Mr. and Mrs. Sayed arrived in Finland from Afghanistan in 2008 to seek asylum for themselves and their unborn daughter. At the time of their arrival, the couple told the authorities basic details about themselves, such as their names, travel route, and financial situation. Later, however, the Finnish authorities started to suspect the veracity of these statements, which led to legal action and eventually criminal trial. During this two-day trial multiple different, and also conflicting, details concerning the Sayeds' background, actions, and time in Finland were presented. The Afghan couple, now separated, were both prosecuted for serious economic fraud and for several false statements in regulatory proceedings. In addition to this, Mr. Sayed was prosecuted for unlawful surveillance and Miss Sayed for child abuse.

The charges of serious economic fraud were at the centre of Mr. and Miss Sayed's criminal case. Due to their status as asylum seekers, the couple had been entitled to financial support from the state—support that the authorities had come to consider wrongfully granted. The Sayeds started to receive financial support on arrival in Finland which had reached several thousand euros by the time of the trial. The couple had been rejected a number of times during their asylum process, but as they were not satisfied with the decisions and appealed, the process was prolonged. Mr. and Mrs. Sayed lived together in different reception centres during the years of their asylum process, but according to social workers, their marriage

seemed quarrelsome. Indeed, after the first round of rejections, Mrs. Sayed diverged from the couple's joint statement, and she disclosed a new reason for an individual asylum request: human trafficking.

A few years after the Sayeds first arrived in Finland Mrs. Sayed, who at that time was assumed to be well beyond the age of 18, told a social worker about her suspicions regarding her actual age. The timing of her statement, which was beneficial in terms of their asylum process, caused much debate at the trial. According to Mrs. Sayed, she was sold for marriage by her violent father when she was still under-age, and she was also convinced that Mr. Sayed must have been aware of her status as a minor. After the suspicions over Mrs. Sayed's legal age transpired, a forensic age estimation was performed. According to the results, Mrs. Sayed's year of birth was estimated to be 1993 instead of 1990, which meant that she would have been underage both at the time of their marriage and also when the Sayeds entered Finland. As a result, the couple's marriage was void and Miss Sayed, together with the couple's child, was entered into a protection system for victims of human trafficking.

When Mr. Sayed became aware of the age dispute and the human trafficking charges raised against him, he decided to disclose a new side to the story. He said, in turn, that they had given false information right from the beginning in terms of their background, travel route, and financial situation. According to him, Miss Sayed was born in 1989, the couple had lived legally in Russia for several years and had considerable wealth abroad in multiple bank accounts. Mr. Sayed provided evidence to the police, including their passports and bank statements, which supported his story. The passports Mr. Sayed provided suggested that the names the couple had been using with the Finnish officials were not their real names. The police had also gathered further evidence through interception of telecommunications which supported Mr. Sayed's version of the events. At this point Miss Sayed was removed from the protection system for victims of human trafficking, the costs of which had reached more than one hundred thousand euros. Miss Sayed, nonetheless, continued to argue that the passports were forgeries and that she still believed her actual year of birth to be 1993.

At the time of the trial in 2014, Mr. Sayed lived with the couple's daughter and was employed. Miss Sayed had been admitted to a supported living facility for people recovering from mental health problems and she met her daughter regularly under supervision. Miss Sayed, in particular, wanted to stay in Finland and told the judge that she was now excluded from the Afghan community and could not go back to her country of origin.

CULTURE'S ROLE IN DEFENDING MR. AND MISS SAYED AND THE OUTCOME

The defence strategy in Miss Sayed's case was built around cultural arguments to a great extent. Miss Sayed's lawyer reasoned that due to her status as an illiterate and subordinated Afghan woman, Miss Sayed's level of moral and legal culpability was significantly lesser than that of Mr. Sayed's. Miss Sayed's defence highlighted that due to reasons embedded in 'their culture', a woman does not have a say in the financial matters of the household and hence her involvement in the alleged fraud was assumed incorrectly. Throughout the trial, Miss Sayed's complete unawareness of all the official proceedings was often highlighted. Miss Sayed also explained that in Afghanistan it is a common practice to use different names in

different contexts and due to this, she did not think of it as an offence to use a different name with the Finnish officials. It also came to light that during their stay in Russia the couple was granted visas for entrance into Finland and Miss Sayed had at least once travelled by herself. The Sayeds originally stated that they had not visited Finland before their asylum process. When asked in court, Miss Sayed claimed that she did not know she had travelled to Finland but assumed the destination to be a special district within Russia—in a similar manner that Afghanistan has different territories inside its borders.

The prosecutor was highly sceptical towards the cultural arguments employed in Miss Sayed's case. According to the prosecutor, it was extremely unlikely that Miss Sayed remained as unaware as the defence had stated, highlighting, for example, that personal interpreters were always used when Miss Sayed dealt with the authorities. The prosecutor stressed that the Finnish authorities are well accustomed to working with foreigners; they avoid difficult terminology and ensure the most relevant information is understood. The prosecutor was not convinced of the alleged, extremely subordinated status of Miss Sayed and suspected that their move to Finland happened as a result of Miss Sayed's initiative in the first place. Supported by police evidence, the prosecutor concluded that Miss Sayed had family, a sister, in Finland and that she did not enjoy living in Russia. The prosecutor discredited the results of the forensic age estimation due to what were interpreted to be serious deficiencies. The control group used in comparing dental records, for example, had no members from a similar geographical or cultural region as that of Miss Sayed. The prosecutor also emphasised that Miss Sayed's behaviour could be interpreted as going 'against her culture' and hence was likely to erode the Afghan culture-based arguments put forward by the defence. Miss Sayed had not returned to her husband after the age dispute, she had asked for divorce[4], she lived away from the couple's child, and by the time of the trial, she had also abandoned use of a veil.

The Sayeds were found guilty of the majority of the charges. Mr. Sayed had pled guilty from the beginning and only referred to 'his culture' once when explaining that he had lived outside of Afghanistan for several years now and, in fact, thought of himself as being 'Europeanised'. Mr. Sayed's defence strategy, which had strived to brush aside culture and base itself around the plea of guilty, turned out to be more successful than Miss Sayed's culture-heavy, not-guilty defence approach. The court deduced that Miss Sayed had, together with her husband, given several false statements in regulatory proceedings, and that she was also responsible for compensating the costs of her stay with her child in the protection system for victims of human trafficking. The Sayeds were found equally responsible in terms of the financial support acquired from the state during the asylum process. In conclusion, both Mr. and Miss Sayed were sentenced to probation and the length of Miss Sayed's sentence was slightly longer than that of Mr. Sayed's. In terms of financial compensations overall, Mr. Sayed was obligated to repay approximately 22,000 euros whereas Miss Sayed was responsible for a repayment of just under 170,000 euros.[5]

MISS SAYED AND THE AMBIGUITY OF AGENCY

Miss Sayed's case is troubling in several ways and I suspect it posed a serious challenge for the court officials involved in issuing the verdict. Nearly all of the 'hard evidence' supported Mr. Sayed's account of the events, he appeared

more co-operative in court and pleaded guilty to the main charges. Miss Sayed's version, albeit a tragic story, had several loopholes, she was less co-operative and relied mainly on the results of the forensic age estimation—a test that was heavily criticised in court. Overall, Mr. Sayed's account seemed to receive more support through evidence and testimonies and, in the end, appeared to tip the credibility balance against Miss Sayed.

It is tempting to assume that Miss Sayed acted as a sovereign subject who, in a highly calculating manner, adopted Machiavellian tactics in order to 'beat the system'. Such an approach is inclined to view the subject as the sole driving force behind the carefully crafted arguments, who then cunningly cloaks any signs of calculated agency when appearing in front of the law court. The suspected 'victim pretender' has to be highly familiar with criminal laws and the judicial system in order to manoeuvre around them. A subject of this sort also demonstrates significant cultural savviness in being able to spot which cultural stereotypes arising from one cultural context can be useful in another. Based on the outcome of the case, the court officials did not question the liberal legal subjectivity of Miss Sayed and, indeed, treated her as this sort of a 'victim pretender'.

Further insight into the case is gained, I believe, when scrutinising Miss Sayed's involvement through the concept of the vulnerable subject. Miss Sayed came from a challenging background and she was presumably illiterate; she had lived in uncertainty for years and her mental health had also been affected; she had lived in different institutions, received assistance from multiple agencies, and had been represented by a number of legal assistants and social workers in an environment that, in all likelihood, was relatively unfamiliar to her. It seems problematic to make any strong claims concerning the level of her awareness and autonomy in relation to the criminal acts committed. The effort of trying to fit Miss Sayed into one of the victim/agent boxes appears unsatisfactory—yet those are precisely the boxes that not only the academic discussions around culture and women, but also the legal system and its discourses seem to necessitate.

Western law presupposes an autonomous subject, which arguably leaves little room for considerations regarding not only the various vulnerabilities of the subject (Andersson 2016; Fineman 2008, 2013) but also the potential multiplicity of agents. As a rule, criminal charges are pressed against individuals and the final conclusions are built around the dichotomous roles they are perceived as clearly representing: guilty/not-guilty, autonomous/vulnerable, perpetrator/victim. This either-or framework lacks sensitivity to different contexts and levels of agency, crossing out the possibility that, for example in Miss Sayed's case, she was potentially both the driver and the passenger in the situation. It is possible that Miss Sayed was acting in parts proactively and in parts reactively, both striving for certain outcomes and being drawn into a chain of events. Indeed, in Miss Sayed's case Finnish criminal justice may have been unable to pay attention to the intricacy of influences affecting the defendant. Criminal responsibility was appointed solely to the subject, erasing any liability on the part of structures that, however, played a significant role throughout Miss Sayed's time in Finland. Miss Sayed's defence stressed, for example, that after the results of the forensic age estimation became clear, much of the ensuing procedure happened without Miss Sayed's input. The defence claimed that it would be unjust to demand that Miss Sayed repaid the costs resulting from placing her into

the protection system for victims of human trafficking when she was pulled into the system automatically.

BUILDING THE THEMES OF FEMALE AUTONOMY AND VULNERABILITY

In addition to Miss Sayed's case, considerations regarding the vulnerability and autonomy of cultural minority women arose in other criminal cases I studied, as well as in discussions I had with legal professionals. A court verdict from a Southern Finnish District Court, for example, contained interesting notions on the agency of a particular female defendant. The case dealt with the smuggling of a person from Iraq to Finland for the purpose of an arranged marriage, and it involved an Iraqi family of four and a smuggled bride (Prosecutor v [five defendants] [2014] R14/yyy). In the 17-page verdict, the involvement of the different family members—the mother, father, daughter, and son—in arranging the illegal transportation was discussed. A key element of the journey involved the daughter's passport, which was used by the bride to enter Finland by air. All four members of the family, however, claimed that the daughter was unaware of the illegal use of her passport. The bride, on the contrary, argued that everyone, including the daughter, was actively involved in organising her travel from Iraq to Finland. In the verdict the District Court concludes:

> [The daughter's] role has been significant as her passport has been used in the act. Had she refused to hand over her passport, execution of the travel could not have happened the way it did (…) [The daughter] was born in 1984, and she has lived in Finland for years. In addition to this, she is a university student. These things considered, there are no grounds for deeming that she has not been able to make an independent decision regarding the illegal use of her passport. (Prosecutor v [five defendants] [2014] R14/yyy: 7, translated by author)

According to the quote, the court judged the daughter's autonomy on the basis of her age, history of living in Finland and status as a university student. It is worth considering, however, whether refusing 'to hand over her passport' was a realistic choice for the daughter in this particular situation, and to what extent allowing the illegal use of the passport was, then, 'an independent decision' at all. Certainly, she could have been acting willingly, but it is possible to argue that the court, again, used the idea of liberal legal subjectivity as an unquestioned starting point. Taking into consideration the cultural tradition of arranged marriage in question, the vulnerabilities linked to the daughter's gender and cultural background were arguably not invalidated by her age, studies, or history of living in Finland. Scrutinising the daughter's actions from the perspective of a vulnerable subject could have offered a more comprehensive account on her role in the case.

The strong underlying assumptions on a legal subject's autonomy and accountability in legal practice were also highlighted in an interview I conducted with a prosecutor. We discussed the trials that involved immigrant women, and whether or not it would be possible to bring into question issues relating to their vulnerability in some of those litigations. The prosecutor, who had a lot of experience in working with immigration matters, contemplated the issue:

> If the argument is that this is a subordinate woman, then it is the legal assistant's job

> to point out what is it specifically that makes this woman subjected. It won't—if you just say that she is from, let's say, Nigeria, it won't do. You have to bring a medical certificate proving something about the woman. That she is suffering from a trauma, for example, or has mental health issues (…) these could be factors in it. We talk about building themes, so the assistant would need to notify us that he or she seeks to introduce this theme of a subordinate woman and that would allow the assistant an opportunity to bring up also these cultural issues through, for example, hearing the woman about her life: 'Tell us what you have done, can you read and write etc.' (Interview, prosecutor)

It becomes evident from the prosecutor's comment that the idea of liberal legal subjectivity is a definite starting point in the legal sphere when scrutinising the acts of a defendant. In order to make the court recognise aspects relating to the idea of the vulnerable subject rather than the liberal legal subject, the legal assistant must provide a strong case for it. This, of course, has to be carried out in a language familiar to the court through generally accepted evidence, such as medical documents and oral testimonies. The question of how often the legal assistants are able to convince the court on the subordinated status of their clients in an environment where vulnerability has to be translated seamlessly into concrete proofs remains open to speculation.

In the cases of both female defendants, Miss Sayed and the Iraqi daughter, the Finnish justice system was unable to extend the notion of criminal responsibility beyond the liberal legal subject. The concept of responsibility and the idea of self-determining moral agents have their roots in the philosophy of the Enlightenment, and they have served as crucial founding blocks for liberal Western societies (Lacey 2001: 251).[6] As a result, Western law emphasises the centrality of a person and has the idea of individual rights at its core (Glenn 2014: 147–151; see also Mäkinen and Pihlajamäki 2004; Parnell 2006: 453, 463). When comparing civil and common law legal traditions to Islamic or Confucian legal traditions, for example, one quickly recognises the diverging role of the individual. In the Islamic legal tradition, the word for 'right' in the subjective sense familiar to Western law, does not exist (Glenn 2014: 203–204). In the East Asian legal tradition 'individual' is likewise absent, and subjective autonomy or unresponsiveness to others even indicates 'idiocy or immorality' (Ames 1988; Glenn 2014: 334, 337). The legal language of Western tradition, then, is characterised by a highly individualised account of responsibility unmatched by other major legal traditions.

Arguably, the highly individualised account of responsibility adopted by Western societies, necessitates a simple definition of the subject and fails to pay adequate attention to the complexity of influences affecting the party to the criminal proceeding. It is true, of course, that the law court does face some major challenges in striving to scrutinise the legal subjectivity of a person. A highly nuanced assessment might prove to be particularly difficult when there are multiple vulnerabilities at play—such as gender, age, and culture.

It could be argued that shifting the focus from a subject's autonomy to influences that are beyond the individual's control leads to ignoring a major step in modern moral philosophy. 'The invention of autonomy' can be regarded as a crucial shift in Western thought as it enabled the move from morality as obedience to God to morality as self-governance (Schneewind 1998). Indeed, Fineman's analysis of the vulnerable

subject might have propensities towards understanding the individual as excessively submissive, in a manner that bears a likeliness to absolute religious conformity. The danger of extremes when discussing the vulnerability and autonomy of a legal subject is doubtlessly apparent—the sole stress on individual's passivity as well as the act of 'overagentivizing' (McKinley 2009: 115) both share equal risks.

CONCLUSIONS

The Western idea of a rational and highly autonomous legal agent serves a practical purpose for the legal system, yet it fails to offer adequate consideration of the influences affecting the subject's actions and reasoning. Various vulnerabilities of the subject (some of which may be connected to their cultural minority background), the potential involvement of multiple agents, and several situational factors are among the influences that are overlooked by the subject-centred view on agency adopted by the legal system. In order to pursue a more in-depth and genuine assessment of the legal agent and his or her criminal responsibility, a more nuanced and anthropologically fine-tuned concept of agency would be beneficial.

Admittedly, it would be naïve to assume that anthropological notions of agency, or the idea of a vulnerable subject, could be easily incorporated into everyday legal practice. Anthony Good (2008), among others, has highlighted how difficult it is to accommodate relativist anthropological knowledge within legal proceedings that deal with facts and absolutes. The quest for information in legal practice is often constrained by the desire to save time and money (cf. Bouillier 2011: 69; Good 2011: 99; Holden 2011b: 204) and seeking to 'enrich' taken-for-granted concepts 'anthropologically' can, in that context, arguably be seen as a waste of both. The focus on fact finding and resource efficiency in legal proceedings were also underlined by a lawyer I interviewed:

> In order to present it [information regarding a defendant's cultural background] as some sort of a fact, a cultural expert as an expert witness, for example, would be required. But then you would have to consider what the issue being addressed is… I mean if you start to invest in that sort of thing, which is not that meaningful in terms of the actual verdict (…) you always have to assess how important the issue is, and if it needs to be supported through evidence. Even if it ends up going wrong, still then, [you have to assess] was it that big of a question. (Interview, lawyer)

Presumably, there is still a wide gap between the pragmatist field of legal practice and anthropological acumen and insight regarding, for example, the concept of agency. Yet there are promising developments on the front of combining the fields of anthropology and law—*cultural expertise*, for example, has been utilised in the law courts of several countries in cases dealing with cultural minority members (Holden 2011a).

Lastly, and to return to the academic debates on the cultural defence, I have argued that these discussions have been characterised by dichotomous views on female vulnerability and autonomy. It is not only the legal professionals, then, but also the cultural defence researchers who seem to have a tendency to invoke simplistic notions regarding agency. Understanding agency as something a person can 'have' or 'not have' leads to seeing women in the cultural defence debates problematically as either victims or

manipulative agents. Approaching the idea of agency in a more nuanced manner in the cultural defence debates would allow greater space to be recognised between the two extremes, and consequently, facilitate work towards deepening the cultural defence discussions overall.

NOTES

1 I am grateful to my supervisors Hannu I. Heikkinen and Sami Lakomäki for many useful discussions and valuable insights regarding this article.
2 Although women's involvement in advancing FGM can be seen as equally, if not more, significant. For more see Abusharaf (1998: 27); Boddy (2007).
3 For more on the discussion on a 'false consciousness' the Other women are believed to inhabit, see Okin (1994: 5) and for criticism see Minow (2000: 131). Minow highlights the problem of 'dueling accusations of false consciousness' where '[y]ou say that women in my culture have false consciousness, but you say this because of your own false consciousness—or I think this because of my own false consciousness, and so forth.'
4 In the eyes of the Finnish authorities, the couple's marriage remained void, but Miss Sayed had also asked Mr. Sayed to grant her a divorce according to the Islamic tradition, which Mr. Sayed had refused to do.
5 After both Mr and Miss Sayed appealed the District Court's decision, the case proceeded to the Court of Appeal. The District Court's verdict remained in effect for the most part, although the length of probation was reduced for both parties. The additional judicial costs led into increased repayment sums, and the numbers quoted here are the final amounts of compensation required from Mr and Miss Sayed. As the Supreme Court rejected the next appeal, the decision of the Court of Appeal remains in force.
6 The philosophical roots of individualism can, however, be traced back to the Old Testament and to the notion of human beings as the image of God. For more see Ruston (2004); Glenn (2014: 149).

REFERENCES

Court cases

Prosecutor and Finnish Immigration Service v [two defendants] [2014] R14/xxx
Prosecutor v [five defendants] [2014] R14/yyy

Interviews

Prosecutor, 26.10.2016
Lawyer, 1.2.2017

Bibliography

Abusharaf, Rogaia M. 1998. Unmasking tradition: A Sudanese Anthropologist Confronts Female 'Circumcision' and its Terrible Tenacity. *The Sciences* 38: 22–27.

Agara, Tunde 2015. Gendering Terrorism: Women, Gender, Terrorism and Suicide Bombers. *International Journal of Humanities and Social Science* 5 (6): 115–125.

Ahearn, Laura M. 2001. Language and Agency. *Annual Review of Anthropology* 30: 109–137.

Al Jazeera 2016. French 'Burkini' Ban: Secularism or Security? Inside Story. https://www.aljazeera.com/programmes/insidestory/2016/08/french-burkini-ban-secularism-security-160817191824853.html. <accessed 26 January 2018>

Ames, Roger T. 1988. Rites as Rights: The Confucian Alternative. In Leroy S. Rouner (ed). *Human Rights and the World's Religions.* Notre Dame: University of Notre Dame Press.

Amirthalingam, Kumaralingam 2009. Culture, Crime and Culpability: The Defence of Provocation. In Marie-Claire Foblets and Alison Dundes Renteln (eds). *Multicultural Jurisprudence: Comparative Perspectives on the Cultural Defense.* Oxford: Hart Publishing.

Andersson, Ulrika 2016. Communications of Autonomy and Vulnerability in Criminal Proceedings. *International Journal of Law, Language & Discourse* 6.1: 37–44.

Anonymous 1986. The Cultural Defense in the Criminal Law. *Harvard Law Review* 99: 1293–1311.

Billaud, Julie 2015. *Kabul Carnival*: *Gender Politics in Postwar Afghanistan*. Philadelphia: University of Pennsylvania Press**.**

Boddy, Janice 2007. Gender Crusades: The Female Circumcision Controversy in Cultural Perspective. In Ylva Hernlund and Bettina Shell-Duncan (eds). *Transcultural Bodies: Female Genital Cutting in Global Context*. Rutgers: Rutgers University Press.

Bouillier, Veronique 2011. French Law Courts and South Asian Litigants. In Livia Holden (ed.). *Cultural Expertise and Litigation: Patterns, Conflicts, Narratives.* London, Routledge.

Coffman, Jennifer E. 2007. Producing FGM in U.S. Courts: Political Asylum in the Post-Kasinga Era. *Africa Today* 53 (4): 59–84.

Cohen, Joshua; Howard, Matthew and Nussbaum, Martha (eds) 1999. *Is Multiculturalism Bad for Women?: Susan Moller Okin With Respondents.* Princeton: Princeton University Press.

Coleman, Doriane Lambelet 1996. Individualizing Justice through Multiculturalism: The Liberals' Dilemma. *Columbia Law Review* 96: 1093–1167.

Coleman, Doriane Lambelet 2001. Culture, Cloaked in Mens Rea. *South Atlantic Quarterly* 100: 981–1004.

Comaroff, John L and Comaroff, Jean 1997. *Of Revelation and Revolution, Volume Two: The Dialectics of Modernity on a South African Frontier.* Chicago: University of Chicago Press.

Deckha, Maneesha 2009. The Paradox of the Cultural Defence: Gender and Cultural Othering in Canada. In Marie-Claire Foblets and Alison Dundes Renteln (eds). *Multicultural Jurisprudence: Comparative Perspectives on the Cultural Defense.* Oxford: Hart Publishing.

Demian, Melissa 2008. Fictions of Intention in the 'Cultural Defense'. *American Anthropologist* 110 (4): 432–442.

Desjarlais, Robert R. 1997. *Shelter Blues: Sanity and Selfhood Among the Homeless.* Philadelphia: University of Pennsylvania Press.

Fineman, Martha 2008. The Vulnerable Subject: Anchoring Equality in the Human Condition. *Yale Journal of Law & Feminism* 20 (1): 1–23.

Fineman, Martha 2013. Equality, Autonomy and the Vulnerable Subject in Law and in Politics. In Martha Fineman and Anna Grear (eds). *Vulnerability: Reflections on a New Ethical Foundation for Law and Politics*. Farnham: Ashgate.

Frick, Marie-Luisa 2014. The Cultural Defense and Women's Human Rights: An inquiry into the Rationales for Unveiling Justitia's Eyes to 'Culture'. *Philosophy and Social Criticism* 40 (6): 555–576.

Gallin, Alice J. 1994. The Cultural Defense: Undermining the Policies Against Domestic Violence', *Boston College Law Review* 35: 723–745.

Gershon, Ilana 2011a. Neoliberal Agency. *Current Anthropology* 52 (4): 537–555.

Gershon, Ilana 2011b. Critical Review Essay: Studying Cultural Pluralism in Courts versus Legislatures. *Political and Legal Anthropology Review* 34 (1): 155–174.

Glenn, Patrick H. 2014. *Legal Traditions of the World: Sustainable Diversity in Law.* Oxford: Oxford University Press.

Good, Anthony 2008. Cultural evidence in courts of law. *Journal of the Royal Anthropological Institute* 14 (1): S48–S60.

Good, Anthony 2011. Witness Statements and Credibility Assessments in the British Asylum Courts. In Livia Holden (ed.). *Cultural Expertise and Litigation: Patterns, Conflicts, Narratives.* London, Routledge.

Grear, Anna 2011. Sexing the matrix: Embodiment, disembodiment and law: Towards the re-gendering of legal rationality. In Jackie Jones et al (eds). *Gender, Sexualities and Law.* London: Routledge.

Hallevy, Gabriel 2010. Culture-based Crimes Against Women in Societies Absorbing Immigrants: Rejecting the 'Mistake of Law' Defense and Imposing Harsher Sentencing. *Cardozo Journal of Law and Gender* 19: 439–463.

Hallevy, Gabriel 2015. Culture Offenses instead of Cultural Defense: Criminalization of Oppression against Women in the Name of Culture. In Fred Dervin and Regis Machart (eds). *Cultural Essentialism in Intercultural Relations*. New York: Palgrave Macmillan.

Held, Eliot and Fontaine, Reid Griffith 2009. On the Boundaries of Culture as an Affirmative Defense. *Arizona Law Review* 51: 237–251.

Holden, Livia (ed.) 2011a. *Cultural Expertise and Litigation: Patterns, Conflicts, Narratives.* London, Routledge.

Holden, Livia 2011b. Expert Report Writing: Professional Commitments and Legal Outcomes. In Livia Holden (ed.). *Cultural Expertise and Litigation: Patterns, Conflicts, Narratives.* London, Routledge.

Jackson, Amy R. and Gozdecka, Dorota A. 2011. Caught between Different Legal Pluralisms: Women Who Wear Islamic Dress as the Religious 'Other' in European Rights Discourses. *The Journal of Legal Pluralism and Unofficial Law* 43 (64): 91–120.

Kockelman, Paul 2007. The Relation between Meaning, Power, and Knowledge. *Current Anthropology* 48 (3): 375–401.

Koptiuch, Kristin 1996. Cultural Defense and Criminological Displacements: Gender, Race, and (Trans)Nation in the Legal Surveillance of U.S. Diaspora Asians. In Smadar Lavie S and Ted Swedenburg (eds). *Displacement, Diaspora, and Geographies Of Identity*. Durham: Duke University Press.

Lacey, Nicola 2001. Responsibility and Modernity in Criminal Law. *The Journal of Political Philosophy* 9 (3): 249–276.

Lenhart, Kathryn Duque 2013. Multiculturalism and Feminism for Hispanic Immigrant Women Accused of Drug Crimes. *Brigham University Law Review* 2013 (6): 1613–1644.

Lernestedt, Claes 2007. Universalism Abroad and at Home. In Kimmo Nuotio (ed.). *Festschrift in honour of Raimo Lahti*. Helsinki: University of Helsinki.

Lernestedt, Claes 2014. Criminal Law and Culture. In Will Kymlicka, Claes Lernestedt and Matt Matravers (eds). *Criminal Law & Cultural Diversity*. Oxford: Oxford University Press.

Mahmood, Saba 2001. Feminist Theory, Embodiment, and the Docile Agent: Some Reflections on the Egyptian Islamic Revival. *Cultural Anthropology* 16 (2): 202–236.

Mahmood, Saba 2005. *Politics of Piety: The Islamic Revival and the Feminist Subject.* Princeton: Princeton University Press.

Martin, David A. 2005. Adelaide Abankwah, Fauziya Kasinga, and the Dilemmas of Political Asylum. *University of Virginia Public Law and Legal Theory Working Paper Series,* Paper 28.

Matravers, Matt 2014. Responsibility, Morality, and Culture. In Will Kymlicka, Claes Lernestedt and Matt Matravers (eds). *Criminal Law & Cultural Diversity*. Oxford: Oxford University Press.

McKinley, Michelle 1997. Life Stories, Disclosure and the Law. *Political and Legal Anthropology Review* 20 (2): 70–82.

McKinley, Michelle 2009. Cultural Culprits. *Berkeley Journal of Gender, Law & Justice* 24 (2): 91–165.

Mendelsohn, Naomi 2004. At The Crossroads: The Case for And Against a Cultural Defense to Female Genital Mutilation. *Rutgers Law Review* 56 (4): 1011–1038.

Minow, Martha 2000. About Women, About Culture: About Them, About Us. *Daedalus* 129 (4): 125–45.

Mohanty, Chandra Talpade 1986. Under Western Eyes: Feminist Scholarship and Colonial Discourses. *Boundary* 12 (3): 333–359.

Mäkinen, Virpi and Pihlajamäki, Heikki 2004. The individualization of Crime in Medieval Canon Law. *Journal of the History of Ideas* 65 (4): 525–542.

Naraghi Anderlini, Sanam 2016. In Riyadh and the Riviera, Women Have to Fight for the Right to be Themselves. *The Guardian.* https://www.theguardian.com/lifeandstyle/2016/aug/27/burkini-ban-riyadh-riviera-women-fight. <accessed 26 January 2018>

Okin, Susan Moller 1994. Gender Inequality and Cultural Differences. *Political Theory* 22 (1): 5–24.

Okin, Susan Moller 1999. Is Multiculturalism Bad for Women? In Joshua Cohen, Matthew Howard and Martha C. Nussbaum (eds). *Is Multiculturalism Bad for Women?: Susan Moller Okin With Respondents.* Princeton: Princeton University Press.

Ortner, Sherry B. 1997. Thick Resistance: Death and the Cultural Construction of Agency in Himalayan Mountaineering. *Representations* 59: 135–62.

Parekh, Bhikhu 2014. Cultural Defense and the Criminal Law. In Will Kymlicka, Claes Lernestedt and Matt Matravers (eds). *Criminal Law & Cultural Diversity*. Oxford: Oxford University Press.

Parnell, Philip C. 2006. When Silence Becomes Law: Moral Constructions of the Violent Individual. *Ethnos* 71 (4): 453–169.

Phillips, Anne 2007. *Multiculturalism without Culture*. Princeton: Princeton University Press.

Renteln, Alison Dundes 2004. *The Cultural Defense.* New York: Oxford University Press.

Renteln, Alison Dundes 2009. The Use and Abuse of the Cultural Defense. In Marie-Claire Foblets and Alison Dundes Renteln (eds). *Multicultural Jurisprudence: Comparative Perspectives on the Cultural Defense.* Oxford: Hart Publishing.

Renteln, Alison Dundes 2014. What Do We Have to Fear from the Cultural Defense? In Will Kymlicka, Claes Lernestedt and Matt Matravers (eds). *Criminal Law & Cultural Diversity*. Oxford: Oxford University Press.

Rubin, Alissa 2016. Fighting for the 'Soul of France,' More Towns Ban a Bathing Suit: The Burkini**.** *The New York Times.*
https://www.nytimes.com/2016/08/18/world/europe/fighting-for-the-soul-of-france-more-towns-ban-a-bathing-suit-the-burkini.html. <accessed 26 January 2018>

Ruston, Roger 2004. *Human Rights and the Image of God.* London: SCM Press.

Sage, Liz 2013. The Impossible Terrorist: Women, Violence, and the Disavowal of Female Agency in Terrorism Discourses. *Journal of Postcolonial Cultures and Societies* 4 (1): 46–84.

Sahlins, Marshall 1999. Two or Three Things I Know about Culture. *The Journal of the Royal Anthropological Institute* 5 (3): 399–421.

Schneewind, Jerome B. 1998. *The Invention of Autonomy.* Cambridge: Cambridge University Press.

Shabi, Rachel 2016. Burkini ban: New Wave of French 'Mission Civilisatrice'. *Al Jazeera: Opinion/Politics*.
https://www.aljazeera.com/indepth/opinion/2016/08/burkini-ban-wave-french-mission-civilatrice-160828110929500.html. <accessed 26 January 2018>

Shachar, Ayelet 1999. The Paradox of Multicultural Vulnerability: Individual Rights, Identity Groups, and the State. In Christian Joppke and Steven Lukes (eds). *Multicultural Questions.* Oxford: Oxford University Press.

Shachar, Ayelet 2001. *Multicultural Jurisdictions: Cultural Differences and Women's Rights*. Cambridge: Cambridge University Press.

Sheybani, Malek-Mithra 1987. Cultural Defence: One Person's Culture is Another's Crime. *Loyola of Los Angeles International and Comparative law Journal* 9: 751–783.

Song, Sarah 2005. Majority Norms, Multiculturalism, and Gender Equality. *The American Political Science Review* 99 (4): 473–489.

Song, Sarah 2007. *Justice, Gender and the Politics of Multiculturalism*. Cambridge: Cambridge University Press.

Spivak, Gayatri C. 1988. Subaltern Studies: Deconstructing Historiography. In Ranajit Guha and Gayatri Chakravorty Spivak (eds). *Selected Subaltern Studies*. Oxford: Oxford University Press.

Taramundi, Dolores Morondo 2014. Is multiculturalism bad for women, still? Persisting dilemmas in cultural and religious accommodation in Europe. In Izabela Handzlik and Lukasz Sorokowski (eds). *Found in Multiculturalism: Acceptance or Challenge?* Frankfurt: Peter Lang Gmbh.

Volpp, Leti 1994. (Mis)identifying Culture: Asian Women and the 'Cultural Defense'. *Harvard Women's Law Journal* 17: 57–101.

Volpp, Leti 2001. Feminism versus Multiculturalism. *Columbia Law Review* 101: 1181–1218.

TAINA COOKE, Ph.D. Cand.
CULTURAL ANTHROPOLOGY
UNIVERSITY OF OULU
taina.cooke@oulu.fi